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REMARKS

Claims 1, 3, 5 and 7-10 are now in the Application. Claims 1, 3, 5 and 10 are drawn to the elected invention identified by the Examiner as Group I. Claims 7-9 are drawn to a non-elected invention and may be canceled by the Examiner upon the allowance of the claims directed to the elected invention.

Claims 1 has been amended by incorporating recitations from claim 2. This amendment finds support on page 15, line 31 to page 16, line 20 in the specification. In view of the amendment to claim 1, claim 2 has been canceled without prejudice to its reentry at some later date. Also, in response to the Notice of Non-Compliant Amendment, it should be noted that Claim 1 has been amended to clarify that by "m^1" is a subscript.

Claims 4 and 6 have been canceled without prejudice to their reentry at some later day.

Claims 3 and 5 have been amended to recite the positive process step of "adding the polycarboxylic acid cement dispersant according to claim 1" for purposes of clarification and not to limit their original scope.

The amendment to claim 3 finds support on page 24, line 25 to page 26, line 8 and page 44, lines 6-11 in the specification. The amendment to claim 5 finds support on page 26, lines 9-17 and page 44, lines 6-11 in the specification.

Newly presented claim 10 finds basis in the specification at pages 13-14.

The amendments and newly presented claim 10 do not introduce any new matter.

As requested, attached is a new Abstract.

The rejection of claim 1 under 35 U.S.C. 112, second paragraph has been overcome by incorporating recitations from claim 2 therein.

The rejections of claims 3 to 6 under 35 USC 112 or 35 USC 101 have been overcome by the above amendment to claims 3 and 5 to recite positive process steps as stated above.

Claims 1 and 2 were rejected under 35 USC 102(b) as being anticipated by JP 08-012396. JP 08-012396 does not anticipate claim 1 as amended (claim 2 has been canceled).

According to claim 1, as amended, the average molar number of addition of the oxyalkylene groups (which is represented by m^1 in the formula (1)) in the polycarboxylic acid polymer is 100 to 200. In other words, all constituent units of the polycarboxylic acid polymer of claim 1 are substantially formed by the acrylic monomer or derivatives thereof, whereby the average molar number of addition of the oxyalkylene groups in the polycarboxylic acid polymer is 100 to 200.

Contrary to this, concerning all constituent units being formed by the acrylic monomer, the largest molar number of addition in the Examples of JP 08-012396 is 75 (Admixture "AB-2" in Preparation Example 2). JP 08-012396 discloses that the molar number of addition in the Examples is 95, except, this polycarboxylic acid polymer has the constituent unit formed by the **methacrylic ester monomer**, that is, **not** all constituent unit being substantially formed by the **acrylic monomer**.

In the present invention, specifying the average molar number of addition of the oxyalkylene groups as in amended claim 1 provides for strength in early stages, sufficient slump retention ability and sufficient fluidity. These effects are described in page 17, lines 4 to 8, and given by the difference in the results of Physical Property Evaluation between Example 1 (the average molar number of addition of the oxyalkylene groups is 100) and Comparative Examples 1-2 (the average molar number of addition of the oxyalkylene groups is 23 or 90) in Table 2 of page 54.

JP 08-012396 fails to anticipate the present invention. In particular, anticipation requires the disclosure, in a prior art reference, of each and every recitation as set forth in the claims. *See Titanium Metals Corp. v. Banner,* 227 USPQ 773 (Fed. Cir. 1985), *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 1 USPQ2d 1081 (Fed. Cir. 1986), *and Akzo N.V. v. U.S. International Trade Commissioner,* 1 USPQ2d 1241 (Fed. Cir.1986).

There must be no difference between the claimed invention and reference disclosure for an anticipation rejection under 35 U.S.C. 102. *See Scripps Clinic and Research Foundation v. Genetech, Inc.,* 18 USPQ2d 1001 (CAFC 1991) and *Studiengesellschaft Kohle GmbH v. Dart Industries,* 220 USPQ 841 (CAFC 1984).

The provisional rejection of claims 1 and 2 under the judicially created doctrine of obviousness type double patenting as being unpatentable over the claims of copending application S.N. 10/496,141 will be overcome by the filing of a terminal disclaimer.

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Such will be filed upon overcoming the remaining rejections in the case. The filing of a terminal disclaimer is not to be construed as an admission, estoppel or acquiescence. See *Quad Environmental Technology v. Union Sanitary District,* 20 USPQ2d 1392 (Fed. Cir. 1991) and *Ortho Pharmaceuticals Corp. v. Smith,* 22 USPQ2d 1119 (Fed. Cir.1992).

In view of the above, consideration and allowance are, therefore, respectfully solicited.

In the event the Examiner believes an interview might serve to advance the prosecution of this application in any way, the undersigned attorney is available at the telephone number noted below.

The Director is hereby authorized to charge any fees, or credit any overpayment, associated with this communication, including any extension fees, to Deposit Account No. 22-0185.

Respectfully submitted,

By _____

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